

Appendix D

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**
[draft 6-26-2006]

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 20____, by and between Frazer/Exton Development LLC, ("Grantor"), having an address of _____, and, the United States of America on behalf of the Environmental Protection Agency and its representatives, the Commonwealth of Pennsylvania and its representatives [and other appropriate grantees] ("Grantees"), having addresses of _____

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the County of Chester, Commonwealth of Pennsylvania, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Foote Mineral Company Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992, at __ Fed. Reg. __ (Oct. __, 1992). The Site is roughly depicted on **Exhibit B** attached hereto and made a part hereof; and

4. WHEREAS, in a Record of Decision dated March 30, 2006 (the "ROD"), the Director of the Hazardous Site Cleanup Division, EPA Region III, selected a remedial action for the Site, which provides, in part, for the following actions:

- a) tasks employing a technology or combination of technologies discussed in Section XII, Selected Remedy, of the ROD to achieve and maintain the objectives described in the ROD. The technologies discussed in Section XII of the ROD include: In-Situ Soil Stabilization of the South Quarry waste; excavation and off-site disposal of radiological soils, excavation of debris and contaminated soils on the Property; and consolidation and capping of the excavated debris and contaminated soils and other waste materials or demolition waste in either the North or South Quarry located on the Property.

- b) long-term monitoring of groundwater to determine if the source control measures are effective in reducing contaminant concentrations in groundwater to drinking water standard;
- c) implementation of institutional controls to prevent residential use of impacted groundwater, prevent residential use of the capped Quarry areas and preserve the integrity of the remedy drinking water supply source. Such institutional controls include, but are not limited to the following: (1) restrictions on the use of groundwater at the Site for drinking water; (2) prevention of interference with the remedy in the ROD; (3) prevention of drilling wells at the Site; and (4) notice to future owners of the existence of contamination of the Site and the existence of the ROD and its institutional control requirements; and

5. WHEREAS, on _____, 2006, EPA and Frazer/Exton Development LLC entered in to a Consent Decree ("CD") for Remedial Design and Remedial Action, which requires Frazer/Exton Development [and others] to implement the remedy selected in the ROD by performing certain response actions. A copy of the CD may be obtained by contacting:

U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103
Attn: Docket Clerk (3RC00)

Under the CD, Frazer/Exton Development LLC has agreed to perform the remedy in the ROD.

6. WHEREAS, Grantor intends to develop the property as an assisted care/retirement community. what is the official name for this?
7. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site. In order to provide such cooperation, Grantor wishes:
- a) to grant a permanent right of access over the Property from the Grantor to the Grantees, and their assigns and representatives, for purposes of implementing, facilitating and monitoring the remedial actions set forth in the ROD; and
 - b) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

NOW, THEREFORE:

8. Grant: Grantor, on behalf of itself, its successors and assigns, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees, and their assigns and authorized representatives, with general

warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property. Nothing contained in this grant is intended to limit in any way the right of access or entry that the EPA may otherwise have by operation of law.

9. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. Covenants governing use of the Property: The following covenants governing use of the Property run with the land and are binding on the Grantor and its successors and assigns: I took these straight from the CD, but I left our original language AND added the PRPs GMZ language until we have a chance to discuss their changes.

- a) prohibition of future residential development on capped areas of the North and South Quarries at the Site,
- b) provision of notice to current and future owners of the Site regarding the impacted groundwater and soil contamination and quarry fill left at the conclusion of the remedial action,
- c) prohibition of installation of new groundwater wells or the use of existing groundwater wells at the Site other than to implement the Remedy, for as long as contamination remains above the Performance Standards indicated in the ROD;
- d) establishment of a Groundwater Management Zone for the downgradient areas impacted or potentially impacted by contaminated groundwater that may entail restrictions on the installation of new wells, mandatory sampling for Site-related contaminants on new wells and other methods of identifying or limiting exposure. The extent and requirements for the Groundwater Management Zone are expected to be revised with time as contaminants are depleted and the extent of the plume shrinks
- e) prohibition of any activity that could potentially damage or interfere with the selected remedy, and

11. Modification of restrictions: The above restriction may not be modified, or terminated in whole or in part, without at least thirty (30) days written approval of EPA, after reasonable opportunity for review and comment by the Commonwealth of Pennsylvania. Any such modification or termination will be executed by Grantor and Grantee in recordable form. - how can they change them without a ROD amendment?

12. Environmental Protection Easement: Grantor hereby grants to the Grantees, and their assigns and authorized representatives, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Monitoring the Work;
- b) Verifying any data or information submitted to the United States;
- c) Conducting investigations relating to contamination at or near the Site [Property?];
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing additional response actions at or near the Site [Property?];
- f) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- g) Implementing the Work pursuant to the conditions set forth in Paragraph 87 of the Consent Decree (Work Takeover);
- h) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV of the Consent Decree;
- i) Assessing Settling Defendants' compliance with the Consent Decree; and
- j) Determining whether the Site [Property?] or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree;

13. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. EPA's Authority: Nothing in this document shall limit or otherwise affect EPA or the other Grantee's(') right of entry and access or EPA's authority to take response actions under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300, or other federal law.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 20 __, RECORDED IN
THE PUBLIC LAND RECORDS ON _____, 20 __, IN
BOOK _____, PAGE _____, IN FAVOR OF, AND
ENFORCEABLE BY, THE UNITED STATES OF AMERICA
ON BEHALF OF THE ENVIRONMENTAL PROTECTION
AGENCY, THE COMMONWEALTH OF PA [or other grantees].

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantees with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. Enforcement: The Grantees shall enforce the terms of this instrument by resort to specific performance or other legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.

18. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

19. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

20. Encumbrances: Grantor hereby covenants to and with the Grantees and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except for those approved by EPA and noted on **Exhibit C** which is attached hereto and made a part hereof, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

21. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantees:

_____	_____
_____	_____
_____	_____

22. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the Commonwealth of Pennsylvania.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this

document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Grantees and their assigns forever.